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No. 84-1684

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

ALLIED CORPORATION,
Petitioner,

v.

DISTRICT 17, DISTRICT 29, LOCAL UNION 7113, and LOCAL UNION 6023, UNITED MINE WORKERS OF AMERICA; and JOHN RAMEY and JOSEPH MCCARDLE, on Behalf of Themselves and Others Similarly Situated,

and

THE UNITED MINE WORKERS OF AMERICA 1974 BENEFIT PLAN AND TRUST,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

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BRIEF IN OPPOSITION

MICHAEL H. HOLLAND
Counsel of Record
EARL V. BROWN, JR.
UNITED MINE WORKERS OF AMERICA
900 - 15th Street, N.W.
Washington, D.C. 20005
(202) 842-7330

DANIEL B. EDELMAN
YABLONSKI, BOTH AND EDELMAN
1140 Connecticut Avenue, N.W.
#800
Washington, D.C. 20036
(202) 833-9060

Attorneys for Respondents UMWA District 17, et al.

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

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COUNTERSTATEMENT OF QUESTION PRESENTED

Did the court of appeals depart from contract law principles when it held that the scope of a remedy for a party's breach of a collective bargaining agreement was properly determined by the reasonably foreseeable consequences of the breach, consequences which in fact occurred?

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BRIEF IN OPPOSITION

Respondents District 17, District 29, Local Union 7113, and Local Union 6023, United Mine Workers of America and John Ramey and Joseph McCardle, on behalf of themselves and others similarly situated, oppose the granting of the Petition for a Writ of Certiorari for the reasons stated below.[1]

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[1] Pursuant to Rule 19.5 of the Rules of this Court, Respondents are simultaneously filing a Cross-Petition solely to preserve their claims against the UMWA 1974 Benefit Plan and Trust.

COUNTERSTATEMENT

This lawsuit was initiated by Respondents seeking a remedy for Allied's violation of its collective bargaining agreement with the United Mine Workers of America. Article I of the National Bituminous Coal Wage Agreement of 1978 ("1978 NBCWA") required Allied, as a precondition to the sale of any of its covered mines, to obtain its purchaser's undertaking of Allied's obligations under the Agreement. These included Allied's obligation, as the last responsible employer, to provide health and other non-pension benefits for its 1974 pensioners, miners who had retired from mining employment with Allied subsequent to January 1, 1976.[2] In 1980, Allied sold its two mines to Armco, Inc. and Shannon Pocahontas Coal Co. without securing their undertaking of Allied's obligations as last responsible employer.

Armco and Shannon Pocahontas were both parties to the 1978 NBCWA under which they were required to provide health and other non-pension benefits for their own 1974 pensioners. After expiration of the 1978 NBCWA, both predictably became parties to the successor agreement, the 1981 NBCWA, which required them to continue to provide these benefits to 1974 pensioners for whom they were the last responsible employers. (App. A, 5a-6a.)

Allied continued to provide benefits to its 1974 pensioners for the duration of the 1978 NBCWA and, notably, for a substantial period of time thereafter. Only upon receiving notice of a premium increase in 1982 (App. C, 63a-64a), did Allied abruptly announce to its 1974 pensioners that it would terminate their health coverage as of September 29, 1982.

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[2] As the court below found, the employers agreed in the 1978 NBCWA ". . . that the last signatory employer, *or its successor*, of a retired miner would provide the benefits to the retiree." (App. A, 5a.) (emph. suppl.)

The citations are to the Appendices to the Petition.

Respondents brought suit September 29, 1982, to prevent the termination of benefits. They alleged that Allied, based on its breach of Article I of the 1978 NBCWA, incident to the sale of its mines, should be primarily liable to continue to provide the benefits.[3] The district court determined that Allied had violated Article I of the 1978 NBCWA incident to the sale of its mines; Allied offers no more than a perfunctory objection to that determination. (Petition, 6, n. 3.) As a remedy, the district court enjoined Allied to continue providing health and other non-pension benefits to its 1974 pensioners. The court of appeals agreed that Allied had breached Article I and further held that, but for Allied's breach, the benefits of Allied's 1974 pensioners would foreseeably have been carried forward under ensuing labor agreements through the UMWA's bargaining with Armco and Shannon Pocahontas.

REASONS FOR DENYING THE PETITION

THE PETITION PRESENTS NO CIRCUIT CONFLICT, NO CONFLICT WITH ANY PRIOR DECISION OF THIS COURT, AND NO IMPORTANT UNSETTLED QUESTION OF FEDERAL LAW

1. Article I of the 1978 NBCWA was the particular bargain struck by Allied and the UMWA through free collective bargaining. The remedial application of Article I approved here by the Fourth Circuit has no significant ramification beyond this litigation. Petitioner does not assert that the decision of the court of appeals is in conflict with a decision of any other court of appeals. As detailed below, the supposed conflict of the Fourth Circuit's decision with prior decisions of this Court is illusory. Nor does the Petition present any question of federal labor law transcending this case.

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[3] Respondents, in the alternative, sought relief from Allied's purchasers—Armco, Inc. and Shannon Pocahontas Coal Co.—and from the 1974 UMWA Benefit Plan and Trust.

2. Contrary to Petitioner's assertions, the court of appeals in this case merely sustained a remedy for Allied's breach of the collective bargaining agreement. It did so consistent with the traditional contract law principle that the remedy is to be determined by the reasonably foreseeable consequences of a party's breach. The remedy applied by the court of appeals is fully in harmony with the duty of the federal courts to "fashion a body of federal labor law for the enforcement . . . of collective bargaining agreements" which this Court established in *Textile Workers v. Lincoln Mills*, 353 U.S. 448, 451 (1957). The Fourth Circuit in no way "rewrote the collective bargaining agreement" (Petition, 6). Accordingly, this Court's decisions in *H. K. Porter Co. v. NLRB*, 397 U.S. 99 (1970), and *Carbon Fuel Co. v. United Mine Workers of America*, 444 U.S. 212 (1979) have no bearing on the issue here. Notably, neither of those decisions was even cited by Petitioner to the court below.[4]

3. Neither *H. K. Porter* nor *Carbon Fuel* involved the scope of a proper remedy for an established breach of a collective bargaining agreement. *H. K. Porter* concerned the NLRB's statutory power to remedy an employer's refusal to engage in good faith bargaining. The Court held that the NLRB is without authority under the NLRA "to compel agreement when the parties themselves are unable to agree," 397 U.S. at 108, and therefore had erred in imposing a substantive contract term as a remedy for the employer's violation of § 8(a)(5), 29 U.S.C. 158(a)(5). Under the NLRA, the Board is empowered only to usher the parties to the table and not to write the substantive terms of their bargain. The issue in *Carbon*

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[4] The contention in the *amicus curiae* brief (pp. 6-8) that the *en banc* majority opinion is inconsistent with *NLRB v. Atlantic International Corp.*, 664 F.2d 1231, 1233 (4th Cir. 1981) is similarly meritless as that case is clearly inapposite and was never even cited by Allied in its lengthy briefs filed in the court of appeals.

Fuel was whether the Union had a *duty* under its collective bargaining agreement to prevent unauthorized strikes and to bring about their termination.[5] The Court concluded that the Union had *no such duty* and had not breached the agreement.

4. In contrast to *H. K. Porter* and *Carbon Fuel*, the lower courts in this case merely interpreted and applied Allied's bargain. Allied does not dispute that Article I was the product of free collective bargaining. Nor does Allied deny that it disposed of its mines in 1980 without securing its purchasers' undertaking of its benefit obligation. In doing so, it clearly violated Article I, as the district court and *all* members of the Fourth Circuit agreed.[6]

5. The UMWA is entitled, on behalf of its members, to enforcement of the Article I successorship clause, no different from any other lawful provision of its collective bargaining agreement. This Court has underscored the "vital importance of assuring the enforceability" of collective bargaining agreements as a basic tenet of federal labor policy. *Charles Dowd Box Co. v. Courtney*, 368 U.S. 502, 509 (1962); *W. R. Grace & Co. v. Local Union 759*, 103 S.Ct. 2177, 2186 (1983). The Fourth Circuit's decision is in accord with decisions of this Court

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[5] In contrast to the situation here, *Carbon Fuel* came to this Court with a background of sharp circuit conflict on a question of manifest, national importance, *Carbon Fuel, supra*, 444 U.S. at 215 & n. 4.

[6] What divided the Fourth Circuit was the scope of the foreseeable consequences of Allied's breach. Petitioner's perfunctory contention that it did not violate Article I (Petition, 6, n. 3) is unfounded. Petitioner does not dispute that it failed to pass on to its purchasers its obligation to provide benefits for its 1974 pensioners. Allied's action in continuing to provide the benefits itself for the duration of the labor agreement then in effect was not a substitute for performance of its duty under Article I to pass its obligations, including the obligation to provide health and nonpension benefits to retirees, on to the purchasers.

and the courts of appeals which have applied traditional contract damage principles to collective bargaining agreement violations and have upheld contract remedies for harm continuing, as here, after the expiration of the collective bargaining agreement which was violated. In *United Steelworkers of America v. Enterprise Wheel & Car Corp.*, 363 U.S. 593 (1960), the Fourth Circuit Court of Appeals had held that an employer could not be required to reinstate discharged employees or to provide backpay for any period subsequent to expiration of the collective bargaining agreement. This Court held that allowing recovery for consequences of a breach—there established by decision of an arbitrator—which continue after the agreement's expiration should have been upheld. See also *Thompson v. Bhd. of Sleeping Car Porters*, 367 F.2d 489, 493 (4th Cir. 1966); *Richardson v. Communication Workers of America*, 443 F.2d 974, 979 (8th Cir. 1971); *Local 127, United Shoe Workers v. Brooks Shoe Mfg. Co.*, 298 F.2d 277, 281-282 (3d Cir. 1962). The Fourth Circuit's determination of the reasonably foreseeable consequences of Allied's Article I breach in this case was not only fully in harmony with *Lincoln Mills* but was also a wholly-proper application of the traditional contract rule stated in *Hadley v. Baxendale*, 9 Exc. 339 (1854).

6. While Allied accuses the court of appeals of speculation (Petition, 5), it tellingly does not claim that the court was factually incorrect in its assessment of what would probably have ensued but for its breach. Allied wholly ignores that the court of appeals' decision in this respect rests upon nearly four decades of collective bargaining history in the bituminous coal industry involving periodic renegotiation of successor agreements and a consistent practice of bargaining over retiree benefits. (App. A, 17a-18a.)[7]

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[7] Allied ignores also that any uncertainty as to what would have occurred but for its breach *is the result of its breach.* Allied can-

7. Nor is the Fourth Circuit's decision remotely inconsistent with *Allied Chemical & Alkali Workers of America, Local Union No. 1 v. Pittsburgh Plate Glass Co.*, 404 U.S. 157 (1971). The court of appeals' determination of what would probably have occurred through ensuing collective bargaining but for Allied's breach does not carry any intimation that the retiree benefits would have been *mandatory* rather than *permissive* subjects of bargaining. Indeed, this Court stated that nothing in its *Pittsburgh Plate Glass* decision "precludes permissive bargaining over the benefits of already retired employes," 404 U.S. at 171 n. 11. The Court further accepted as correct the NLRB's finding that "bargaining over pensioners' rights [had] become an established industrial practice." 404 U.S. at 175-176. The record here reflects that such bargaining has been an established practice in the bituminous coal industry both prior to and since the 1980 mine transfers involved in this case. (App. A, 17a-18a.) The Court in *Pittsburgh Plate Glass* further recognized that "[t]he retiree . . . would have a federal remedy under § 301 of the Labor Management Relations Act for breach of contract if his benefits were unilaterally changed." 404 U.S. at 181 & n. 20. That is precisely what occurred here in response to Allied's breach of Article I of the 1978 NBCWA.

8. Petitioner's reliance (Petition, 1) on the close division of the Fourth Circuit in this matter is not availing. That division reflects no more than disagreement over the correctness of the majority's determination as to what would foreseeably and probably have occurred but for Allied's breach. Possible disagreement over that issue would hardly be an appropriate reason for granting this Court's review.

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not be heard to complain of the uncertainty which it itself created. *Story Parchment Co. v. Paterson Parchment Paper Co.*, 282 U.S 555 (1931).

CONCLUSION

Any semblance here of an important federal question is no more than the rote protest of a party subjected to a remedy for its established contract breach—that a court "rewrote" its bargain. This case, rather than departing from the principle of free collective bargaining underpinning *H. K. Porter*, 397 U.S. at 108, and *Carbon Fuel*, 444 U.S. at 218-19, squarely sustains it by enforcing Allied's bargain. The remedy here is consistent with *Lincoln Mills* and traditional remedy principles. It presents no occasion for this Court's review.

For the reasons stated, the Petition should be denied.

Respectfully submitted,

MICHAEL H. HOLLAND
Counsel of Record

EARL V. BROWN, JR.
UNITED MINE WORKERS OF AMERICA
900 - 15th Street, N.W.
Washington, D.C 20005
(202) 842-7330

DANIEL B. EDELMAN
YABLONSKI, BOTH AND EDELMAN
1140 Connecticut Avenue, N.W.
#800
Washington, D.C. 20036
(202) 833-9060

Attorneys for Respondents
UMWA District 17, et al.